

THE SUTTON LAW FIRM

November 5, 2007

The Honorable Ross Johnson
California Fair Political Practices Commission
428 J St., Ste. 620
Sacramento, CA 95814

RE: Development of Regulation 18530.31

Dear Chairman Ross:

Our law firm represents a number of city and county PACs which make occasional contributions to state candidates, as well as state PACs that make only occasional contributions to state candidates. We write today to oppose proposed Regulation 18530.31 as drafted, and to urge the Commission to instead adopt a regulation that is more consistent with the language and intent of Government Code section 85303, which either exempts these PACs or creates a presumption that funds raised by these PACs are raised for purposes other than supporting or opposing candidates for state office. At a minimum, we request that the Commission clarify that the intent of the regulation is not to require PACs that make only rare or occasional contributions to state candidates to comply with the onerous requirements of this proposed regulation. Neither the language of section 85303 nor the purposes articulated by the Commission justify application of this proposed regulation to city and county PACs and PACs that make only occasional contributions to state candidates, and yet this proposed regulation has a significant financial impact on these PACs.

We first urge the Commission to expressly exempt city and county PACs and state PACs that make only occasional contributions to state candidates (e.g., PACs that are active in multiple counties, PACs that primarily support ballot measures, or independent expenditure PACs) from the scope of proposed Regulation 18530.31.¹ As drafted, Regulation 18530.31 unnecessarily restricts the PAC's sponsor from helping to defray the

¹As you know, just because an organization is formed as a state PAC does not mean that all of its activity is in support of state candidates. Rather, a PAC may file as a state PAC because it supports or opposes candidates or measures in more than one county. In addition, city and county PACs, formed to support or oppose candidates or measures in only one county or city, may have de minimus state-level activity. (See Cal. Govt. Code section 82027.5.)

cost of raising funds for the PAC, severely restrict the PAC's ability to raise funds to support and oppose city and county candidates and committees, and places significant additional record-keeping burdens on the PAC, just so the PAC can make an occasional contribution to a state candidate.

For example, suppose a city PAC spends \$100,000 every other year to support and oppose city candidates and ballot measures, and contributes \$2,000 every other year to one or two Assembly candidates from the city where the PAC is primarily active. Under the proposed regulation, this PAC must pay for at least 33 percent of all fundraising events from its all-purpose account, thus limiting the amount the PAC's sponsor can pay for these events, just so the PAC may make contributions to state candidates that total two percent of its total expenditures. The only way for such a PAC to avoid having to comply with this requirement is for the PAC to open separate "restricted use" and "all-purpose" bank accounts – thus increasing the overall cost of maintaining the PAC – and conduct the bulk of the PAC's activity from the restricted use account, but maintain an all purpose account for its occasional de minimus state-level contributors.²

Although the burden on these PACs is great, the benefit to the public is minor. By definition, these PACs already spend the vast majority of their resources supporting or opposing local candidates, so there is very little risk that funds raised in increments of over \$6,000 are used to indirectly support state candidates or to subsidize the PAC's involvement in state candidate activity. (In other words, an organization could not circumvent the rules set out in your proposed Regulation by simply registering as a city or county PAC, because these organizations cannot, by definition, have "significant" or "regular" activity in support of state candidates without qualifying as a state PAC. (See, e.g., FPPC Advice Letter to Kenneth Oplinger (1995) I-95-206; FPPC Advice Letter to Mark T. Boehme (1994) I-94-036.))

For this reason, we urge the Commission to expressly exempt city and county PACs, as well as state PACs that make only occasional contributions to state candidates, from the

²In our experience, to comply with Regulation 18534, most local PACs currently operate exclusively with an all-purpose account. If the proposed regulation passes, the PAC must unnecessarily spend PAC resources to open an additional bank account, pay to administer and monitor the account, and pay the expense of training someone to determine what expenses must be made from what account.

scope of this or any other regulation interpreting section 85303. To do so, the Commission could amend proposed Regulation 18530.31(a) as follows:

“A ‘committee’ within the meaning of Government Code section 85303 does not include a candidate-controlled campaign committee, subject to the limits of Government Code section 85301, a small contributor committee subject to the limits of Government Code section 85302, a city or county general purpose committee defined in Government Code section 82027.5, or a state general purpose recipient committee that makes \$6,000 or less in contributions to candidates for elective state office per calendar year.”

If the Commission does not adopt this exemption, we urge the Commission to add a presumption that PACs falling into these categories have received all funds for purposes other than making contributions to candidates for state office. This presumption could, of course, be overcome if the PAC actually solicits funds or receives funds earmarked as outlined in subdivision (b) of the proposed regulation. By creating this sort of presumption, the Commission will give security to city and county PACs and state PACs that make only occasional contributions to state candidates that they do not have to be concerned with the complicated allocation formula or with restricting the amount a PAC’s sponsor can spend on fundraising. To accomplish this, we suggest the following language:

“(f) Contributions to city and county general purpose committees, as defined in Government Code section 82027.5, and to state general purpose recipient committees that make \$6,000 or less in contributions to candidates for elective state office per calendar year, are presumed to be used for purposes other than making contributions to candidates for elective state office. This presumption may be rebutted by evidence that the donor made the contribution to the committee as defined in subdivision (b) of this regulation.”

At a very minimum, we urge the Commission to clarify that the phrase in this proposed regulation – “uses a contribution to raise funds that will be used to make contributions to candidates for elective state office” – is not intended to require city or county PACs or state PACs that make only occasional contributions (totaling \$6,000 or less per calendar year) to comply with this regulation. For example, the Commission could

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include the following language in subdivision (b)(3) of the proposed regulation:

“A contribution is not considered to be ‘used to make contributions to candidates for elective state office’ within the meaning of this subdivision if the committee receiving the contribution makes contributions totaling \$6,000 or less per year to candidates for elective state office.”

Thank you for your consideration of these comments. We look forward to talking to you about them in more detail at next week’s meeting.

Sincerely,



Melissa Mikesell

cc: Commissioner Timothy Hodson
Commissioner Gene Huguenin
Commissioner Robert E. Leidigh
Commissioner Ray Remy
Larry Woodlock, Esq.

MAM/lc

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